



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Authorize the Mayor, on Behalf of the City Council, to Send a Letter of Opposition to AB 602 (Feuer), Land Use - Cause of Actions and Time Limitations

MEETING DATE: August 18, 2010

PREPARED BY: Konradt Bartlam, Interim City Manager

RECOMMENDED ACTION: Authorize the Mayor, on behalf of the City Council, to send a letter of opposition to AB 602 (Feuer), Land Use - Cause of Actions and Time Limitations.

BACKGROUND INFORMATION: The City was asked by the League of California Cities to oppose AB 602 and send a letter of opposition regarding the same to specific members of the Legislature.

Existing law allows opponents of a local legislative body's zoning and planning decision one year to file an objection if it meets certain requirements. If the decision relates to the supply of affordable housing, the opposition has 60 days after the notice is filed or the legislative body takes a final action in response to the notice, whichever occurs first.

This bill would authorize the notice to be filed any time after an action to adopt, amend, or revise a housing element. Essentially, this bill would create an unlimited statute of limitations to challenge land use planning decisions. For these reasons, it is recommended that local governments oppose the proposed legislation.

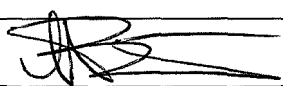
FISCAL IMPACT: Not applicable at this time.

FUNDING AVAILABLE: Not applicable at this time.



Konradt Bartlam
Interim City Manager

APPROVED:



Konradt Bartlam, Interim City Manager

CITY COUNCIL

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August 18, 2010

The Honorable Mike Feuer
State Capitol Building, Room 3146
Sacramento, California 95814

SUBJECT: Notice of Opposition to AB 602 (Feuer): Land Use and Planning:
Cause of Actions: Time Limitations

Dear Assembly Member Feuer:

The City of Lodi opposes AB 602. This bill creates an unlimited statute of limitations period for claims arising out of a number of housing statutes, including the Housing Element, Density Bonus, and Housing Accountability Act (Anti-NIMBY law). In contrast, all other similar challenges to land use and zoning decisions must be made in 60 to 90 days.

Short statute of limitation periods generally apply to land use and zoning decisions in order to promote certainty for planning agencies and property owners. Once a decision is made, an owner can proceed to obtain permits and establish new uses, businesses, and jobs for the community. This bill would permit those that have a particular perspective to single out actions (and be awarded attorneys fees) years after a particular decision has been made, creating uncertainty precisely at the time when local governments are doing everything they can to encourage projects and economic development.

AB 602 is also troubling because the expansion of the housing element and other laws (such as the density bonus law) over the past two decades provide a great deal of legal fodder from which a plaintiff can use to sue. The language of this exception is very broad, and many of the standards included in the statutes to which it would apply are not written precisely. These factors make local agencies especially vulnerable.

Finally, the current economic downturn must be taken into account. Many cities are eliminating planning staff because of lost revenues. This means that cities will have difficulty complying with a myriad of new planning mandates with housing, fire protection, water conservation, flood protection, and greenhouse gas emissions. Put simply, cities are being asked to do more planning with less staff. AB 602 just assures that cities will continue to pay for this lack of resources well into the future (though liabilities, costs of defense in all cases, and attorneys fees in cases lost).

For these reasons, the City of Lodi is opposed to AB 602.

Sincerely,

Phil Katzakian
Mayor